

1 DAVID WM. ENGELMAN, SBA #004193
2 STEVEN N. BERGER, SBA #009613
3 BRADLEY D. PACK, SBA #023973

ENGELMAN BERGER, P.C.

3636 NORTH CENTRAL AVENUE
SUITE 700
PHOENIX, ARIZONA 85012

Ph: (602) 271-9090
Fax: (602) 222-4999
Email: dwe@engelmanberger.com
Email: snb@engelmanberger.com
Email: bdp@engelmanberger.com

7 Attorneys for Gary and Ronna Martinson

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

11 In re:

12
13 GARY A. MARTINSON and RONNA L.
14 MARTINSON,

15 Debtors.

Chapter 7

Case No. 2:09-bk-33841-RJH

**MOTION TO COMPEL TRUSTEE
TO ABANDON REAL PROPERTY**

16 Debtors Gary A. Martinson and Ronna L. Martinson (collectively, the “Debtors”), hereby
17 move this Court for an order compelling the Chapter 7 trustee (the “Trustee”) to abandon the estate’s
18 interest in the following described property:

19 • The real property located at 5550 Paint Pony Trail, Show Low, Arizona 85901 and
20 legally described as:

21 THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF
22 SECTION 15, TOWNSHIP 10 NORTH, RANGE 21 EAST, OF THE GILA
AND SALT RIVER BASE AND MERIDIAN, NAVAJO COUNTY,
23 ARIZONA, DESCRIBED AS FOLLOWS:

24 COMMENCING AT THE NORTH QUARTER CORNER OF SAID
SECTION 15;

25 THENCE SOUTH 89 DEGREES, 48 MINUTES, 06 SECONDS EAST, A
DISTANCE OF 663.05 FEET;

26 THENCE SOUTH 00 DEGREES, 56 MINUTES, 09 SECONDS WEST, A
27 DISTANCE OF 884.96 FEET TO THE TRUE POINT OF BEGINNING;

1 THENCE NORTH 89 DEGREES, 51 MINUTES, 02 SECONDS WEST, A
2 DISTANCE OF 666.76 FEET TO THE NORTH AND SOUTH MID
SECTION LINE;

3 THENCE NORTH 89 DEGREES, 51 MINUTES, 08 SECONDS WEST, A
4 DISTANCE OF 329.74 FEET;

5 THENCE SOUTH 01 DEGREES, 03 MINUTES, 49 SECONDS WEST, A
6 DISTANCE OF 442.87 FEET;

7 THENCE SOUTH 89 DEGREES, 52 MINUTES, 03 SECONDS EAST, A
8 DISTANCE OF 328.93 FEET TO THE NORTH AND SOUTH MID
SECTION LINE;

9 THENCE SOUTH 89 DEGREES, 52 MINUTES, 39 SECONDS EAST, A
10 DISTANCE OF 668.49 FEET;

11 THENCE NORTH 00 DEGREES, 56 MINUTES, 09 SECONDS EAST, A
12 DISTANCE OF 442.48 FEET TO THE TRUE POINT OF BEGINNING;

13 EXCEPT THE NORTH 20.00 FEET FOR ROADWAY AND UTILITY
14 PURPOSES; ALSO

15 EXCEPT THE WEST 10.00 FEET FOR EQUESTRIAN BRIDAL PATH;
16 ALSO

17 EXCEPT ANY PORTION LYING WITHIN THE FOLLOWING
18 DESCRIBED PROPERTY:

19 A PORTION OF THE NORTH HALF OF SECTION 15, TOWNSHIP 10
20 NORTH, RANGE 21 EAST, OF THE GILA AND SALT RIVER BASE
21 AND MERIDIAN, NAVAJO COUNTY, ARIZONA, BEING MORE
22 PARTICULARLY DESCRIBED AS FOLLOWS:

23 COMMENCING AT THE NORTH QUARTER CORNER OF SAID
24 SECTION 15;

25 THENCE NORTH 89 DEGREES, 49 MINUTES, 22 SECONDS WEST, A
26 DISTANCE OF 331.36 FEET;

27 THENCE SOUTH 01 DEGREES, 03 MINUTES, 49 SECONDS WEST, A
DISTANCE OF 442.87 FEET;

THENCE SOUTH 01 DEGREES, 03 MINUTES, 49 SECONDS WEST, A
DISTANCE OF 442.87 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES, 51 MINUTES, 08 SECONDS EAST, A
DISTANCE OF 295.50 FEET;

THENCE SOUTH 01 DEGREES, 03 MINUTES, 49 SECONDS WEST, A
DISTANCE OF 442.79 FEET;

THENCE NORTH 89 DEGREES, 52 MINUTES, 03 SECONDS WEST, A
DISTANCE OF 295.50 FEET;

1 THENCE NORTH 01 DEGREES, 03 MINUTES, 49 SECONDS EAST, A
2 DISTANCE OF 442.87 FEET TO THE TRUE POINT OF BEGINNING.

3 (the "Real Property").

4 The value of the Real Property likely does not exceed the aggregate amount of all valid liens
5 and the debtors' homestead exemption, particularly if closing costs are considered. The Real
6 Property is therefore of no value to the estate.

7 This Motion is supported by the following Memorandum of Points and Authorities and the
8 papers and pleadings on file, all of which are incorporated herein by reference.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. JURISDICTION.**

11 1. On December 31, 2009 (the "Filing Date"), Debtors filed a voluntary petition for relief
12 under Chapter 7 of the United States Bankruptcy Code under Case No. 2:09-bk-33841 (the
13 "Bankruptcy Case").

14 2. Lawrence J. Warfield (the "Trustee") is the duly appointed and acting Chapter 7
15 Trustee of this Bankruptcy Case.

16 3. This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a "core" proceeding
17 pursuant to 28 U.S.C. § 157(b)(2)(4),(o).

18 **II. FACTUAL BACKGROUND.**

19 **A. The Real Property.**

20 4. Debtors are the owners of the Real Property, having purchased it on or about
21 January 25, 2006.

22 5. On information and belief, as of the Filing Date, the Real Property had an approximate
23 fair market value of \$1,500,000.00. This information is derived from an appraisal of the Real
24 Property dated October 15, 2009. Debtors believe that the value of the Real Property has likely
25 declined somewhat since the Filing Date.

26 6. PNC Bank, N.A. ("PNC") holds a first position Deed of Trust ("First Deed of Trust")
27 on the Real Property securing an obligation of approximately \$990,000.00. *See* Schedule D.

1 7. PNC also holds a second position Deed of Trust (the “Second Deed of Trust”),
2 securing an obligation of approximately \$250,000.00. *See* Schedule C.

3 8. Debtors have claimed their equity in the Property as exempt pursuant to A.R.S. § 33-
4 1101. *See* Schedule C.

5 9. Debtors are delinquent in their mortgage payments, and PNC has filed a stay relief
6 motion. Debtor has objected to said Motion.

7 10. Thus, with closing costs and real estate commissions added to the secured
8 indebtedness and homestead exemption, the Real Property has no value and is of no benefit to the
9 estate.

10 **III. THE TRUSTEE SHOULD BE COMPELLED TO ABANDON THE REAL PROPERTY.**

11 Pursuant to 11 U.S.C. § 554(b), “the court may order the trustee to abandon any property of
12 the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.”
13 An abandonment is a relinquishment of the Debtor’s property from the bankruptcy estate and, upon
14 the abandonment, the interest is restored to the Debtor *nunc pro tunc* as of the Filing Date. *In re*
15 *Catalano*, 279 F.3d 682, 685 (9th Cir. 2002). Since post-petition appreciation accrues to the benefit of
16 the estate, the Trustee has an incentive to delay the administration of the estate to the prejudice of the
17 Debtors. *See In re Rolland*, 317 B.R. 402, 409 n.12 (Bankr. C.D. Cal. 2004). A motion to compel the
18 abandonment of property that is worthless to the estate at the time the bankruptcy petition is filed is
19 thus an appropriate remedy. *Id.*

20 In this case, abandonment of the Real Property is appropriate because it has inconsequential or
21 no value to the estate and is an administrative burden. There is no non-exempt equity in the Real
22 Property that may benefit the estate. The Real Property should be abandoned now to remove the
23 Trustee’s incentive to delay the administration of the estate, in the hope that the Real Property will
24 appreciate in value and that he may claim that appreciation for the estate’s benefit. As the Trustee
25 has not noticed his intention to abandon the Real Property voluntarily, Debtors request that he be
26 compelled to do so.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Debtors respectfully request that the Court enter an order
3 compelling the Trustee to abandon the Real Property.

4 **DATED** this 30th day of June, 2010.

5 **ENGELMAN BERGER, P.C.**

6
7 By /s/ DWE, SBA #004193

8 David Wm. Engelman
9 Steven N. Berger
10 Bradley D. Pack
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012
Attorneys for Gary and Ronna Martinson

11 **COPY** of the foregoing mailed and e-mailed*
12 (where indicated) this 30th day of June, 2010 to:

13 Lawrence J. Warfield
14 P.O. Box 14647
15 Scottsdale, AZ 85267
*lwarfield@warfieldcpas.com
Chapter 7 Trustee

16 Terry A. Dake
17 Terry A. Dake Ltd.
11811 N. Tatum Blvd., Suite 3031
Phoenix, AZ 85028
*tdake@cox.net
18 Attorneys for Trustee

19 Mark S. Bosco
20 Leonard J. McDonald
21 Tiffany & Bosco
2525 E. Camelback Road
Suite 300
Phoenix, AZ 85016
*msb@tblaw.com
*ljm@tblaw.com
23 Attorneys for Movant

24 Randy Nussbaum
25 Vishnu R. Jonnalagadda
NUSSBAUM & GILLIS, P.C.
14500 N. Northsight Blvd., Suite 116
26 Scottsdale, Arizona 85260
rnussbaum@nussbaumgillis.com
27 vjonnalagadda@nussbaumgillis.com

Office of the U.S. Trustee
230 North First Avenue
Suite 204
Phoenix, AZ 85003

/s/ Susan K. Reisbeck, Paralegal